

Senate Bill No. 1742

Passed the Senate August 29, 2000

Secretary of the Senate

Passed the Assembly August 25, 2000

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to add Chapter 4 (commencing with Section 2950) to Part 5 of Division 4 of the Probate Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1742, Hughes. Adult abuse.

Existing law provides for misdemeanor and felony sanctions, including imprisonment and fines, for offenses involving the abuse of an elder or dependent adult, depending upon the circumstances.

Existing law provides for various procedures for the protection of elders and dependent adults by the public guardian and by programs implemented by the State Department of Social Services.

Existing law authorizes a public guardian who is authorized to take possession or control of property to issue a written certification to that effect, and would require a financial institution or other person to provide the public guardian with information concerning property of a proposed ward or conservatee and surrender property of that person to the public guardian that is subject to loss, injury, waste, or misappropriation.

This bill would authorize certain peace officers to issue a declaration that an elder person, as defined, is substantially unable to manage his or her financial resources or to resist fraud or undue influence, there exists a significant danger that the elder person will lose all or a portion of his or her property as a result of fraud or misrepresentation or the mental incapacity of the elder person, there is probable cause to believe a crime is being committed against that person, the crime is connected to his or her inability to manage his or her financial resources or to resist fraud or undue influence, and he or she suffers from that inability as a result of deficits in one or more mental functions. Upon receipt of the declaration, the public guardian would be authorized



to rely on the information contained in the declaration to take immediate possession and control of the property of the elder person. The bill would authorize the public guardian to issue a certification of that fact, which certification would require financial institutions and other persons to submit information about, and possession of, property of the victim. This bill would also establish a process whereby a person identified as a victim in a declaration may bring an ex parte petition in the superior court for an order quashing the certification.

The bill would also require the public guardian to seek individuals to manage the estate of the elder person, under certain circumstances and in accordance with specified criteria.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 2950) is added to Part 5 of Division 4 of the Probate Code, to read:

CHAPTER 4. FINANCIAL ABUSE OF MENTALLY IMPAIRED
ELDERS

Article 1. General

2950. (a) It is the intent of the Legislature to do all of the following:

- (1) Reduce the incidence of financial abuse perpetrated against mentally impaired elder adults.
- (2) Minimize monetary losses to mentally impaired elder adults as a result of financial abuse.
- (3) Facilitate timely intervention by law enforcement, in collaboration with the public guardian, to effectively protect mentally impaired elder adult victims of financial abuse, and to recover their assets.

(b) Any peace officer or public guardian of a county that has both of the following, as determined by the public guardian of that county, may take the actions authorized by this chapter:



(1) The existence of sufficient law enforcement personnel with expertise in the assessment of competence.

(2) The existence of a law enforcement unit devoted to investigating elder financial abuse and the enforcement of laws applicable to elder abuse.

(c) This chapter shall be coordinated with existing mandated programs affecting financial abuse of mentally impaired elders that are administered by the adult protective services agency of the county.

2951. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise.

(a) “Declaration” means a document that substantially complies with the requirements of Section 2954, and is signed by both a peace officer and a supervisor from the county’s adult protective services agency and provided to the public guardian in accordance with subdivision (b) of Section 2952.

(b) “Elder person” means any person residing in this state, 65 years of age or older.

(c) “Financial abuse” means a situation described in Section 15610.30 of the Welfare and Institutions Code.

(d) “Financial abuse POST training” means an elder financial abuse training course certified by the Commission on Peace Officer Standards and Training.

(e) “Financial institution” means any bank, savings and loan, thrift, industrial loan company, credit union, or any branch of any of these institutions doing business in the state, as defined by provisions of the Financial Code.

(f) “Peace officer” means a sheriff, deputy sheriff, municipal police officer, or a peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, duly sworn under the requirements of state law, who satisfies any of the following requirements:

(1) The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code has completed or participated as a lecturer in a financial abuse POST training program within the last 36 months. The



completion of the course may be satisfied by telecourse, video training tape, or other instruction. The training shall, at a minimum, address relevant elder abuse laws, recognition of financial abuse and fraud, assessment of mental competence in accordance with the standards set forth in Part 17 (commencing with Section 810) of the Probate Code, reporting requirements and procedures for the investigation of financial abuse and related crimes, including neglect, and civil and criminal procedures for the protection of victims. The course may be presented as part of a training program that includes other subjects or courses.

(2) The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, has consulted with a sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, who satisfies the requirements of paragraph (1) concerning the declaration defined in subdivision (a) and obtained the signature of that sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code on a declaration that substantially complies with the form described in Section 2954.

(g) “Property” means all personal property and real property of every kind belonging to, or alleged to belong to, the elder.

Article 2. Estate Protection

2952. (a) A peace officer may issue a declaration, as provided in Section 2954, concerning an elder person if all of the following conditions are satisfied:

(1) There is probable cause to believe that the elder person is substantially unable to manage his or her financial resources or to resist fraud or undue influence.

(2) There exists a significant danger that the elder person will lose all or a portion of his or her property as a result of fraud or misrepresentations or the mental incapacity of the elder person.



(3) There is probable cause to believe that a crime is being committed against the elder person.

(4) The crime is connected to the inability of the elder person to manage his or her financial resources or to resist fraud or undue influence, and that inability is the result of deficits in the elder person's mental functions.

(5) The peace officer has consulted with an individual qualified to perform a mental status examination.

(b) If the requirements of subdivision (a) are satisfied, the peace officer may provide a signed declaration to the public guardian of the county. The declaration provided by the peace officer under this subdivision shall be signed by both the peace officer and a supervisor from the county's adult protective services agency. The declaration shall be transmitted to the public guardian within 24 hours of its being signed, and may be transmitted by facsimile.

(c) (1) Upon receiving a signed declaration from a peace officer, the public guardian is authorized to rely on the information contained in the declaration to take immediate possession or control of the property of the elder person referred to in the declaration, and may issue a written recordable certification of that fact as provided for in Section 2901.

(2) The mere issuance of the declaration provided by this section shall not require the public guardian to take possession or control of property and shall not require the public guardian to make a determination that the requirements for the appointment of a conservator are satisfied.

(3) A public guardian acting in good faith is not liable when taking possession or control of property pursuant to this section.

(d) (1) If the public guardian takes possession of an elder person's property pursuant to this section, the public guardian shall attempt to find agents pursuant to the use of durable powers of attorney or successor trustees nominated in trust instruments, or other persons having legal authority under existing legal instruments, to manage the elder person's estate.



(2) If the public guardian is unable to find any appropriate person to manage the elder person's estate pursuant to paragraph (1), the public guardian shall attempt to find family members willing to manage the elder person's estate. If no documents exist appointing fiduciaries, the public guardian shall follow the priorities set forth in Article 2 (commencing with Section 1810) of Chapter 1 of Part 3.

(3) The public guardian shall take the steps described in paragraphs (1) and (2) within 15 days of taking possession of an elder person's property pursuant to this section.

2953. (a) (1) A public guardian who has taken possession or control of the property of an elder person pursuant to this chapter is entitled to petition a court of competent jurisdiction for the reasonable costs incurred by the public guardian for the protection of the person or the property, together with reasonable fees for services, including, but not limited to, reasonable attorneys' fees. These fees shall be payable from the estate of the elder person if the person is not deemed competent by the court and if any of the following apply:

(A) The public guardian or someone else is appointed as the temporary or general conservator of the estate.

(B) An attorney-in-fact, under a durable power of attorney, or a trustee, takes steps, or is notified of the need to take steps, to protect the estate of the elder person.

(C) An action is brought against the alleged financial abuser by the elder person, his or her conservator, a trustee, a fiduciary, or a successor in interest of the elder person, arising from a harm that the public guardian taking charge was intended to prevent or minimize.

(2) Any costs incurred by the public guardian pursuant to paragraph (1) shall be compensable as provided in Section 2902. Fees collected by the public guardian pursuant to this chapter shall be used for the activities described in this chapter.

(b) When a public guardian has taken possession or control of the property of an elder person pursuant to this chapter, the public guardian shall exercise reasonable



care to ensure that the reasonable living expenses and legitimate debts of the elder person are addressed as well as is practical under the circumstances.

(c) Any person identified as a victim in a declaration described in Section 2954 may bring an ex parte petition in the superior court for an order quashing the certification issued by the public guardian as provided in subdivision (c) of Section 2952.

(1) Upon request by the petitioner, the court may defer filing fees related to the petition, and order the public guardian to authorize the release of funds from a financial institution to reimburse the petitioner the filing fees from assets belonging to the petitioner, but shall waive filing fees if the petitioner meets the standards of eligibility established by subparagraph (A) or (B) of paragraph (6) of subdivision (a) of Section 68511.3 of the Government Code for the waiver of a filing fee.

(2) The court shall quash the certification if the court determines that there is insufficient evidence to justify the imposition on the alleged victim's civil liberties caused by the certification.

(3) If the court determines that there is sufficient evidence to justify the imposition on the alleged victim's civil liberties caused by the certification, the court may, in its discretion, do one or more of the following:

(A) Order disbursements from the alleged victim's assets, as are reasonably needed to address the alleged victim's needs.

(B) Appoint a temporary conservator of the alleged victim's estate, where the facts before the court would be sufficient for the appointment of a temporary conservator under Section 2250.

(C) Deny the petition.

(D) Award reasonable attorney's fees to respondent's attorney from the victim's estate.

(d) The public guardian shall serve or cause to be served a copy of the certification issued pursuant to Section 2952 on the victim by mail within 24 hours of the execution of the certification, or as soon thereafter as is practical, in the manner provided in Chapter 4



(commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

2954. A declaration issued by a peace officer under this chapter shall not be valid unless it substantially complies with the following form:

DECLARATION

PRINT OR TYPE

- 1. My name is: _____
 My badge number is: _____
 My office address and telephone number are:

- 2. I am a duly sworn peace officer presently employed by _____
 _____, in the County of _____,
 _____, in the State of California.

- 3. On ____ (date) I personally interviewed _____ (victim) at
 _____ a.m./p.m. at _____ (address). The victim resides
 at _____ (address, telephone number, and name of facility,
 if applicable).

- 4. There is probable cause to believe that:
 - (a) _____ (Victim)
 is substantially unable to manage his or her financial resources
 or to resist fraud or undue influence, and
 - (b) There exists a significant danger the victim will lose all or
 a portion of his or her property as a result of fraud or
 misrepresentations or the mental incapacity of the victim, and
 - (c) There is probable cause to believe that a crime is being
 committed against the victim, and
 - (d) The crime is connected to the victim's inability to manage
 his or her financial resources or to resist fraud or undue
 influence, and
 - (e) The victim suffers from that inability as a result of deficits
 in one or more of the following mental functions:

INSTRUCTIONS TO PEACE OFFICER: CHECK ALL
BLOCKS THAT APPLY:

[A] ALERTNESS AND ATTENTION



- 1. Levels of arousal. (Lethargic, responds only to vigorous and persistent stimulation, stupor.)
- 2. Orientation. Person _____ Time _____ (day, date, month, season, year), Place _____ (address, town, state), Situation _____ (why am I here?).
- 3. Ability to attend and concentrate. (Give detailed answers from memory, mental ability required to thread a needle.)

[B] INFORMATION PROCESSING

Ability to:

- 1. Remember, i.e., short- and long-term memory, immediate recall. (Deficits reflected by: forgets question before answering, cannot recall names, relatives, past presidents, events of past 24 hours.)
- 2. Understand and communicate either verbally or otherwise. (Deficits reflected by: inability to comprehend questions, follow instructions, use words correctly or name objects; nonsense words.)
- 3. Recognize familiar objects and persons. (Deficits reflected by: inability to recognize familiar faces, objects, etc.)
- 4. Understand and appreciate quantities. (Perform simple calculations.)
- 5. Reason using abstract concepts. (Grasp abstract aspects of his or her situation; interpret idiomatic expressions or proverbs.)
- 6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest. (Break complex tasks down into simple steps and carry them out.)
- 7. Reason logically.

[C] THOUGHT DISORDERS

- 1. Severely disorganized thinking. (Rambling, nonsensical, incoherent, or nonlinear thinking.)
- 2. Hallucinations. (Auditory, visual, olfactory.)
- 3. Delusions. (Demonstrably false belief maintained without or against reason or evidence.)



- 4. Uncontrollable or intrusive thoughts. (Unwanted compulsive thoughts, compulsive behavior.)

[D] ABILITY TO MODULATE MOOD AND AFFECT
 Pervasive and persistent or recurrent emotional state which appears severely inappropriate in degree to the patient's circumstances. Encircle the inappropriate mood(s):

- | | | |
|---------|--------------|--------------|
| Anger | Euphoria | Helplessness |
| Anxiety | Depression | Apathy |
| Fear | Hopelessness | Indifference |
| Panic | Despair | |

- 5. The property at risk is identified as, but not limited to, the following:

Bank account located at: _____
 (name, telephone number, and address of the bank branch)

Account number(s): _____

Securities/other funds located at: _____
 (name, telephone number, and address of financial institution)

Account number(s): _____

Real property located at: _____
 (address)

Automobile described as: _____
 (make, model/color)

 (license plate number and state)

Other property described as: _____

Other property located at: _____

- 6. A criminal investigation will will not be commenced against: _____

(name, address, and telephone number)

for alleged financial abuse.



BLOCKS 1, 2, AND 3 MUST BE CHECKED IN ORDER FOR THIS DECLARATION TO BE VALID:

- 1. I am a peace officer in the county identified above.
- 2. I have consulted concerning this case with a supervisor in the county’s adult protective services agency who has signed below, indicating that he or she concurs that, based on the information I provided to him or her, or based on information he or she obtained independently, this declaration is warranted under the circumstances.
- 3. I have consulted concerning this case with an individual qualified to perform a mental status examination.

Signature of Declarant Peace Officer

Date

Signature of Concurring Adult Protective Services Supervisor

2955. Nothing in this chapter shall prohibit or restrict a public guardian from undertaking any other proceeding authorized by law.

SEC. 2. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) “Financial abuse” means a situation in which one or both of the following apply:

(1) A person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any wrongful use, or with the intent to defraud.

(2) A situation in which all of the following conditions are satisfied:

(A) An elder (who would be a dependent adult if he or she were between the ages of 18 and 64 years) or



dependent adult or his or her representative requests that a third party transfer to the elder or dependent adult or to his or her representative, or to a court appointed receiver, property that meets all of the following criteria:

(i) The third party holds or has control of the property.

(ii) The property belongs to, or is held in express trust, constructive trust or resulting trust for, the elder or dependent adult.

(iii) The ownership or control of the property was acquired in whole or in part by the third party or someone acting in concert with the third party from the elder or dependent adult at a time when the elder or dependent adult was a dependent adult or was a person who would have been a dependent adult if he or she had then been between the ages of 18 and 64 years.

(B) Despite the request for the transfer of property, the third party without good cause either continues to hold the property or fails to take reasonable steps to make the property readily available to the elder or dependent adult, to his or her representative or to a court appointed receiver.

(C) The third party committed acts described in this paragraph in bad faith. A third party shall be deemed to have acted in bad faith if the third party either knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available. For purposes of this subdivision, a third party should have known of this right if, on the basis of the information received by the third party, it is obvious to a reasonable person that the elder or dependent adult had this right.

(b) For the purpose of this section, the term “third party” means a person who holds or has control of property that belongs to or is held in express trust, constructive trust or resulting trust for an elder or dependent adult.

(c) For the purposes of this section, the term “representative” means an elder or dependent adult’s conservator of the estate, or attorney-in-fact acting within the authority of the power of attorney.



SEC. 3. If both this bill and AB 2107 are enacted and both bills amend Section 15610.30 of the Welfare and Institutions Code, the amendment to Section 15610.30 made by AB 2107 shall prevail over the amendment to that section made by this act, whether AB 2107 is enacted prior to, or subsequent to, the enactment of this act.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.



Approved _____, 2000

Governor

